

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Matter of)	
)	
)	
Digital Television Distributed)	MB Docket No. 05-312
Transmission System Technologies)	
)	

To: The Commission

REPLY COMMENTS OF THE COALITION FOR DTS

Pursuant to Section 1.415 of the Commission's Rules, the undersigned television broadcasters and equipment manufacturer, collectively referred to as the Coalition for DTS ("Coalition"), hereby submit the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding.¹ A review of the comments filed in response to the NPRM demonstrates overwhelming support for the adoption of rules to allow full-power television stations to use distributed transmission system ("DTS") technologies. Given this overwhelming support, the single most important step the Commission can take in this proceeding is to adopt rules authorizing the use of DTS technology quickly.

The need to act quickly is even more pressing now that Congress has enacted a hard DTV cut-off date. The National Association of Broadcasters correctly observed that DTS can be "an essential tool" in achieving improved reception rates for the many second and third analog television sets that will be forced to rely on DTV set-top reception at the end of the transition.² If

¹ To the extent necessary, the Coalition hereby requests leave to file its reply comments three days late. The press of other business and then the unexpected death of a 47 year-old colleague prevented undersigned counsel from finalizing and filing these comments earlier. The Coalition submits that acceptance of these comments will not unfairly prejudice other parties because the proceeding is now at the end of the comment cycle.

² See Comments of National Association of Broadcasters ("NAB") at 5-6.

broadcasters are to use DTS to build-out or fill-in their over-the-air DTV service areas before the February 2009 DTV transition deadline, the Commission must act quickly to give broadcast equipment manufacturers sufficient time to incorporate the technology into their product lines and stations sufficient time to design and build-out DTS networks. Given that the number of over-the-air-only analog television sets was estimated in 2005 at 73 million by the Government Accounting Office (“GAO”) and 80 million by the Consumer Federation of America (“CFA”), prompt Commission action in this proceeding is imperative.³

To facilitate prompt Commission action, these reply comments propose a compromise DTS coverage area boundary that addresses many of the concerns raised at the initial comment stage about the policies supported by the Coalition. This compromise proposal is submitted by the Coalition in the hope that it can be used to resolve the only real issue in debate in this proceeding and thus lead to the expeditious completion of this rulemaking. The comments then propose new standards for (i) DTV service at a station’s coverage area boundary and (ii) waivers seeking to provide coverage beyond a station’s coverage area boundary. Adoption of these new standards will be extremely important if the Commission decides not to authorize DTS service beyond the hypothetically maximized service area provided in the Table of Distances. Finally, these reply comments propose an additional DTS service area limit that undermines the principal objection raised by the New American Foundation (“NAF”) that is relevant to the instant proceeding.

DTS Coverage Area Compromise: In its initial comments, the Coalition urged the Commission to authorize full-power television stations to utilize DTS to provide primary service

³ See “Digital Broadcast Television Transition: Estimated Cost of Supporting Set-Top Reception Boxes to Help Advance the DTV Transition,” GAO 05-28T, February 17, 2005; “Estimating Consumer Costs of a Federally Mandated Digital TV Transition: Consumer Survey Results,” Consumer Federation of America, June 29, 2005.

throughout their entire DMAs once the DTV transition ended, provided certain interference and coverage requirements were met. This proposal garnered the most support among the commenters in this proceeding.⁴ The Coalition maintains that primary service protection for DTS service throughout the DMA is in the long-term public interest because it will help ensure the viability of free, over-the-air broadcasting and enhance consumer welfare by allowing television stations to become a separate pipe for the delivery of video programming into the home, thereby providing more choice to consumers and meaningful competition to other MVPDs. Primary service throughout the DMA provides the biggest incentive for broadcasters to use DTS technology and will thus result in more free, over-the-air service to the public without increasing the overall level of interference in the market.

However, the Coalition also recognizes that the support for DMA-wide primary service was not unanimous and that the broadcasting industry as a whole and the Commission may not be ready for such a step. Several commenters supported a proposal to authorize full-power television stations to provide service throughout their DMAs with service beyond the Commission's proposed hypothetically maximized contour treated as secondary.⁵ Another proposed to allow service to some but not necessarily all of the DMA.⁶ Still other commenters supported the use of DTS by full-power television stations to provide service only within a station's hypothetically maximized contour.⁷

⁴ See Comments of: NAB at 4; Paxson Communications Corporation at 7; Sunbelt Television at 3; TVPlus at 6; KJLA, KVMD Licensee and Rancho Palos Verdes Broadcasters at 1; Reading Broadcasting at 5; Cohen, Dippell & Everist ("CDE") at 2; Merrill Weiss Group ("MWG") at 9-10.

⁵ See Comments of: The Alliance for Local Broadcasters ("Alliance") at 2; The Association of Public Television Stations ("APTS") at 1, 5; Penn State University at 3-4.

⁶ See Comments of The Association of Maximum Service Television, Inc. ("MSTV") at 10-11.

⁷ See Comments of: Harris Corporation at 3 (but states that the DMA approach is also a viable option); Siete Grand Television at 14; Community Broadcaster Association ("CBA") at 2-3.

To expedite the resolution of this issue, the Coalition hereby supports the following compromise proposals:

- full power television stations should be allowed to use DTS to provide primary service within the larger of (i) the hypothetically maximized service area as proposed in the NPRM using the Commission's Table of Distances; or (ii) the service area of the station in the DMA with the greatest population and coverage area.⁸
- full-power stations should be allowed to provide service throughout their DMAs with service beyond the hypothetical maximized coverage area treated as secondary;
- full-power stations should be allowed to file applications to provide service throughout their DMAs on a secondary basis as soon as possible but the Commission should require that actual service in these expanded areas be delayed until after the February 2009 transition date;⁹
- the FCC should commit to consider the question of primary service protection for a station's coverage outside its hypothetically maximized service area in the next DTV biennial review.

These compromise proposals address many of the concerns raised in the comments but, at the same time, will still allow stations to expand over-the-air DTV service to viewers in their markets. Most importantly, the proposal to allow DTS service throughout the DMA on a secondary basis if outside the hypothetically maximized contour resolves any concerns about a service area land grab by full-power stations. In these extended coverage areas, full power stations would only have the same interference rights LPTVs and translators do. With this change in the status of coverage outside the hypothetically maximized coverage area, the

⁸ Although it has been suggested that the Table of Distances could allow improper coverage extensions into the adjacent DMAs, this argument ignores the fact that in such circumstances the maximized coverage from a single transmitter will also extend into the same adjacent DMA, an extension that the Commission's rules already allow.

⁹ The Coalition also urges the FCC to delegate authority to the Media Bureau to approve build-outs to serve a station's DMA prior to the February 2009 deadline if the applicant can show that it will be providing over-the-air service to an underserved area.

overwhelming majority of commenters support service area expansion using DTS throughout a station's DMA.

Allowing full power stations using DTS to expand their service areas on a secondary basis will closely track the approach the Commission adopted for digital LPTV, translators and Class A stations. Specifically, the Commission recently decided to accept applications from these stations for digital companion channels. While these companion channel proposals must provide service to the station's City of License, the Commission's rules also allow these stations to expand their DTV coverage areas well beyond their current analog service areas, provided the applicable interference rules are satisfied. Under the compromise proposal described above, full power DTV stations will similarly be permitted to expand their DTV service areas throughout their DMAs on a secondary basis, provided the applicable interference standards are satisfied.

At the same time, expanding a full-power DTV station's coverage throughout the DMA on a secondary basis will not prevent new co-channel service from full-power or LPTV stations. In almost all circumstances, a maximized, single-transmitter DTV facility will already have prevented new co-channel service because of the destructive level of interference that it would be predicted to cause to any service from a new full-power, LPTV, translator or Class A station co-channel operation.

The proposal to supplement the hypothetically maximized coverage area with the largest coverage area in the market, the so-called equal service area approach, follows current Commission practice regarding limits on maximized service areas for DTV stations using single transmitters.¹⁰ This rule was created to allow UHF analog stations to secure DTV coverage

¹⁰ See Comments of KJLA, LLC, KVMD License Co., LLC and Rancho Palos Verdes Broadcasters, Inc. (the "Joint Parties") at 3.

parity with VHF analog stations. To date, this rule has been easy to apply and should work well with the coverage table included in the NPRM.

Finally, because the Coalition requests that the Commission take up the question of primary protection for the expanded coverage area of stations using DTS technology when the next biennial DTV proceeding is launched. The focus of the next biennial proceeding is expected to be on establishing coverage, interference and operating rules after the transition. The Coalition submits that the issue of the appropriate treatment of DTS service areas should be considered in that same proceeding.

DTS service at the coverage area boundary: Regardless of the coverage area boundary the Commission ultimately approves for stations using DTS, the Commission should modify its rule governing DTS service at the coverage area boundary. The need for this action is especially critical if the Commission does not allow DTV service throughout the DMA in some form. The FCC's current proposal requires that the predicted 41 dBu contours of a UHF station's DTS network fit entirely within the station's hypothetically maximized DTV operation as specified in the Table of Distances. Instead, the Coalition strongly urges the Commission to:

- require that the predicted 48 dBu contours of a UHF station's proposed DTS network fit entirely within the applicable DTS coverage area boundary adopted by the FCC (i.e. the hypothetically maximized DTV contour or the DMA).¹¹

The Commission should adopt this proposal for several reasons. First, design flexibility for a DTS network at the edge of its coverage area boundary is essential to allow a station to provide effective service inside its coverage boundary area. Second, the Commission designated the 48 dBu contour to be the minimum coverage necessary to provide service to a station's City of License. Thus, a rule prohibiting a station from providing City of License service outside its

¹¹ Corresponding signal strengths should be specified for high-band and low-band VHF stations.

coverage area boundary properly ensures that a station does not encroach into another market with meaningful service. The Coalition submits that this proposal is a sensible balance between concerns about preventing impermissible service area expansion into adjacent markets using DTS and maintaining some DTS design flexibility to allow a station to provide meaningful service inside its coverage area boundary.

Third, although this proposal will allow 41 dBu service outside a station's coverage area limit, 41 dBu service will not result in any meaningful service area expansion. It is commonly understood in the industry that the FCC's planning factors underestimated the signal strength required to provide actual DTV service. In particular, serious questions have been raised regarding the sufficiency of a 41 dBu signal to provide any DTV service. Even if the Commission decides not to recognize these real world signal strength concerns, there is more than a sufficient basis for the FCC to conclude that 41 dBu service outside a station's coverage area boundary does not present a material concern about improper, DMA-creep.

DTS Waivers of Coverage Area Boundary: The Coalition also urges the Commission to allow the Media Bureau staff to consider waiver requests to permit DTS service area extensions beyond the coverage area boundary in the limited circumstances described below. Once again, the need for a waiver policy is imperative if the Commission does not allow DTS coverage throughout the DMA in some form. Without a waiver policy, the Commission will unnecessarily impose a prophylactic rule that will prohibit over-the-air service that is clearly in the public interest. Specifically, the Commission should:

- authorize the Media Bureau to approve waivers of the applicable coverage area boundary if the applicant demonstrates that the expanded service area is needed to provide meaningful service inside its coverage area boundary.

The Coalition submits that a waiver policy like this is needed to accommodate instances in which coverage area expansion using DTS is clearly in the public interest even if it exceeds

the coverage area boundary adopted by the FCC. For example, Pennsylvania State University, the licensee of WPSU-DT, currently operates a two-transmitter DTS network. It has plans (and funding) to add two additional, low-power transmitters to serve two cities (Altoona and Johnstown) inside WPSU-DT's DMA, and inside its hypothetically maximized service area as defined in the Table of Distances. Unfortunately, to provide meaningful service to these cities, the contours of the new DTS transmitters will extend beyond WPSU-DT's hypothetically maximized contour. Because these cities do not currently receive over-the-air service from any other PBS stations, this service is clearly in the public interest even if it spills over the hypothetically maximized service area as defined in the Table of Distances (which is the currently proposed coverage area boundary). For this reason, the Commission should adopt a waiver policy that would allow the Media Bureau staff to approve DTS proposals like this one.

Additional DTS Coverage Area Limitation: A significant portion of the comments submitted by the New American Foundation ("NAF") are clearly well beyond the scope of this proceeding. However, the Coalition urges the Commission to adopt one additional DTS coverage limit that will undermine NAF's claim that any rule authorizing DTS will somehow impermissibly allow broadcasters to fill in currently unoccupied white spaces. By adopting the following limit, the Commission will ensure that stations using DTS will not be filling any white space that they were not already authorized to fill:

- the interference contour of a proposed DTS network cannot exceed the interference contour of the hypothetically maximized DTV operation as specified in the Table of Distances.¹²

Although NAF is clearly in denial about it, the Commission already has authorized television station licensees to provide DTV service as specified by the operating parameters contained in the underlying DTV construction permits and licenses. Moreover, as provided in

¹² See NAF Comments at 3.

the Commission's rules, this authorized DTV service could be extended/expanded until the maximum ERP, HAAT and other technical parameters are reached.

By authorizing DTV permittees/licensees to occupy their channels up to and including the maximized parameters specified in the rules, the Commission also authorized a concomitant level of interference. Contrary to the claims of NAF, the interference generated as a result of this approved or authorized television service effectively authorizes television stations to fill in white spaces well beyond their Grade B contours. Thus, if the Commission adopts the Coalition's proposal and requires the interference contour of any proposed DTS network to stay within the interference contour of the hypothetically maximized DTV operation as specified in the Table of Distances, the resulting grant of compliant DTS proposals will not allow stations to fill in any white spaces not already authorized to be filled by the Commission.

CONCLUSION

For the foregoing reasons, the Coalition for DTS urges the Commission to adopt rules authorizing the use of DTS technologies quickly and to permit the stations using DTS to provide secondary service to portions of their DMAs outside of the hypothetically maximized service area provided that the interference and service requirements described herein and in the Coalition's initial comments are satisfied.

Respectfully submitted,

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